IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 937 of 2006

HONOURABLE MR.JUSTICE KS JHAVERI

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HIRJIBHAI MULJIBHAI GAMIT & 1 - Appellant(s)
Versus
MAGANLAL M. GAMETI & 4 - Defendant(s)

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Appearance :
MS MEGHA JANI for Appellant(s) : 1 - 2.
None for Defendant(s) : 1,3 - 5.
MR NIRZAR S DESAI for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 27/07/2006

ORAL JUDGMENT

1. This appeal was ordered to be heard along with First Appeal No.2204 of 2005. The said appeal has been disposed of by a separate order dated 27th July 2006. Hence the present appeal is also disposed of on the same lines.

2. Heard the learned Advocate for the respective parties in the appeal. As a result of hearing and perusal of the record it appears that the Trial Court has erroneously dismissed the CMA and main application without properly appreciating the relevant facts on record while passing the impugned order. In this view of the matter there is a consensus between the

learned Advocates for the parties for remanding the matter to the trial court for fresh decision. Accordingly the following order is passed:

> "The impugned order dated 15th July 2005 is quashed and set aside. The matter is remanded to Trial Court for considering the same afresh. The concerned parties shall appear before the trial court on 7th August 2006 and interested parties may make an application for appropriate relief. The Trial Court shall hear and decide the application and the matter on day to day basis on or before 15th September 2006. The appellant will be allowed to be substituted as prayed for in Exhibit 122. It is clarified that this Court has not decided the matter on merits in view of the fact that any observation which may be made by this Court may affect the rights of either parties before the trial court. However, pending those proceedings the present appellant shall (i) give admission after taking approval from the competent authority viz. Director of Primary Education and District Education Officer, Bharuch, (ii) perform only his day to day duty and (iii) shall not dispose of any property and (iv) appointment of staff, if any, made shall be subject to confirmation by the Body taking charge after the proceedings are over beforethe Trial Court/Charity Commissioner.
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> In view of this order, the application dated 19th July 2006, preferred by respondent no.7 shall not be heard by the Charity Commissioner till the trial court decides the proceedings between the parties."

3. Accordingly the appeal is partly allowed. No order as to costs. The Registry shall send back the R & P so as to reach the Trial Court on or before 3rd August 2006.

[K.S. JHAVERI, J.]

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